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09/954,464	09/14/2001	Kenneth F. Gay	GAY 2-009-3	8908

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EXAMINER

TRAN, KHOA H

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 05/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/954,464

Applicant(s)

GAY ET AL.

Examiner

Khoa Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9,11-23,25-30,32-36 and 42-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9,11-23,25-30,32-36 and 42-50 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 September 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "D-shape merchandise retaining loop having spaced apart legs insertable within said forward receptor gap" in claims 7 and 21 and "rod-form merchandise guideways having downwardly disposed oppositely disposed legs positionable respectively into said forward and rearward receptor gaps" in claims 8 and 22 must be shown or the features canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action.

### ***Claim Objections***

With respect to claim 30, line 4, "said base rod" should be --said rod beams-- and line 6, "said bin length" should be --said bin width-- in order to make sense since the shelf defined in the independent claim as having a width that is parallel to the base rods. Claim 26 is objected to because it appears to be a double recitation of claim 12. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 8, 13-23, 25, 26 and 42-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claims 7, 8, 21 and 22, there is no support of what is being claimed. In particular, there is no description and/or showing of the D-shape merchandise retaining loop having spaced apart legs insertable within said forward receptor gap and there is no support of rod-form merchandise guideways having downwardly disposed oppositely disposed legs positionable respectively into said forward and rearward receptor gaps. With respect to claim 13, line 33, and claim 42, line 8, there is no antecedent for "said vertical supports" and "said vertical support".

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 13 is rejected under the judicially created doctrine of double patenting over the U. S. Patent No. 6, 302,282 in view of Upshaw. The U. S. Patent No. 6, 302,282

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teaches all limitations of the reciting brackets. .Upshaw discloses an open frame display shelf assembly (A) comprising a plurality of base rods (150) and perpendicular paralleled rod beams (136) that form a forward and rearward front walls above the shelf and define gaps there between; the forward and rearward front walls having a plurality of elongate forming rods (112, 132, 122); the forming rods (122, 124) are parallel with base rods; a plurality of respective side wall forming rods (158, 170) arranged in parallel relationship with rod beams and fixed to oppositely disposed portions of load transfer rods (140, 160, 166, 174b, 174c) that define side receptor gaps therebetween. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the open frame display shelf assembly of Upshaw with the provision of brackets as taught by the U. S. Patent No. 6, 302,282 in order to enable the open frame display shelf assembly of Upshaw to be hung from vertical supports.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Upshaw et al. in view of Merl. Upshaw discloses an open frame display shelf assembly (A) comprising a plurality of base rods (150) and perpendicular paralleled rod beams (136)

that form a forward and rearward front walls above the shelf and define gaps there between; the forward and rearward front walls having a plurality of elongate forming rods (112, 132, 122); the forming rods (122, 124) are parallel with base rods; a plurality of respective side wall forming rods (158, 170) arranged in parallel relationship with rod beams and fixed to oppositely disposed portions of load transfer rods (140, 160, 166, 174b, 174c) that define side receptor gaps therebetween. Merl teaches an open frame display shelf assembly having first and second brackets (42) that are connectable to a first and second vertical support (52), see Figures 1-5. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the open frame display shelf assembly of Upshaw with the provision of brackets as taught by Merl in order to enable the open frame display shelf assembly of Upshaw to be hung from vertical supports.

Claims 2, 3, 5, and 6, are rejected under 35 U.S.C. 103(a) as being unpatentable over Upshaw et al. in view of Merl as applied to claim 1 above, and further in view of Garfinkle. Garfinkle teaches a general planar sign (12) having at least two couplers (13 and 16) connected between sign engaging surface assembly (2 and 3) where in the couplers allow to alter the slope of the sign. See Figure 1-3. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the modified shelf display assembly with the provision of a sign as taught by Garfinkle in order to bring a shopper's attention to a specific item and informs the shopper of the identification of the item and its unit pricing.

Claims 9, 10, 27-31, 48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Upshaw et al. in view of Merl as applied to claim 1 above, and further in view of Henke et al. Henke et al. teach a pivotable sign assembly (36) comprises a sign having a flat visual display support surface (37), a pivot connector (60) extends from a display support upper edge (36) and including a pivot hook (62), see Figure 3, and the sign has a length of the sign contacts the forward region of the next adjacent lower shelf. See Figures 1, 2 and 4. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the modified shelf display assembly with the provision of a pivotable sign assembly as taught by Henke et al. in order to have a sign that promotes information or advertising the products and at the same time allows easy access to the products stored behind the sign. With respect to claim 28, it would have been an obvious matter of choice of design at the time the invention to have made the lower shelf to be larger than the above shelf in order to have more space for its suitability, to store more products, without structurally alter the shelf structure.

Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Upshaw et al. in view of Merl as applied to claim 1, 9, 10, 27-31 above, and further in view of Garfinkle. Garfinkle teaches a general planar sign (12) having at least two couplers (13 and 16) connected between sign engaging surface assembly (2 and 3) where in the couplers allow to alter the slope of the sign. See Figure 1-3. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the modified shelf display assembly with the provision of a sign as taught by

Garfinkle in order to bring a shopper's attention to a specific item and informs the shopper of the identification of the item and its unit pricing.

Claims 11 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Upshaw et al. in view of Merl and Henke et al. as applied to claims 1, 9, 10, above, and further in view of Visocky et al. Visocky et al. teach a sign (21) having a dual channel assembly of forward and rearward channels, an engagement member (35), and a pivot connector (36) having a connector channel (36, 38) slidably engageable with the rearward channel and engagement member, see Figures 2 and 4, and wherein the pivot connector has a stabilizer tab (46). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the visual display sign of Henke et al. with a sign that has a dual channel as taught by Visocky et al. in order prevent misalignment of pricing on the sign and the pricing can be quickly changed without removing the sign module from the shelf.

Claims 12, 26 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Upshaw et al. in view of Merl. As applied to claim 1 above and further in view of Sainato. Sainato teaches an overhead visual display support having a sign (12) width extending between the upper and lower edges (60) and a length corresponding with the bay width of the shelf (14). See Figures 1 and 2. The overhead sign of Sainato also has a first and second stanchions (32) connected to a respective first and second overhead bracket assemblies (64) such that allowing the overhead visual display to be tilted at a given angle. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the U. S. Patent No. 6, 302,282 with the



provision of an overhead visual display as taught by Sainato in order to provide sale information or advertising the products being displayed on the shelf without sacrificing the space needed for the product stores on the shelf.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the U. S. Patent No. 6, 302,282 in view of Upshaw as applied to claim 13 above, and further in view of Garfinkle. Garfinkle teaches a general planar sign (12) having at least two couplers (13 and 16) connected between sign engaging surface assembly (2 and 3) where in the couplers allow to alter the slope of the sign. See Figure 1-3. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the modified shelf display assembly with the provision of a sign as taught by Garfinkle in order to bring a shopper's attention to a specific item and informs the shopper of the identification of the item and its unit pricing.

Claims 23 and 24, are rejected under 35 U.S.C. 103(a) as being unpatentable over the U. S. Patent No. 6, 302,282 in view of Upshaw as applied to claim 13 above, and further in view of Henke et al. Henke et al. teach a pivotable sign assembly (36) comprises a sign having a flat visual display support surface (37), a pivot connector (60) extends from a display support upper edge (36) and including a pivot hook (62), see Figure 3, and the sign has a length of the sign contacts the forward region of the next adjacent lower shelf. See Figures 1, 2 and 4. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the modified shelf display assembly with the provision of a pivotable sign assembly as taught by Henke et al. in order to have a sign that promotes information or advertising the

products and at the same time allows easy access to the products stored behind the sign.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over the U. S. Patent No. 6, 302,282 in view of Upshaw and Henke et al. as applied to claims 13, 23, and 24, above, and further in view of Visocky et al. Visocky et al. teach a sign (21) having a dual channel assembly of forward and rearward channels, an engagement member (35), and a pivot connector (36) having a connector channel (36, 38) slidably engageable with the rearward channel and engagement member, see Figures 2 and 4, and wherein the pivot connector has a stabilizer tab (46). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the visual display sign of Henke et al. with a sign that has a dual channel as taught by Visocky et al. in order prevent misalignment of pricing on the sign and the pricing can be quickly changed without removing the sign module from the shelf.

Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over the U. S. Patent No. 6, 302,282 in view of Upshaw and Henke et al. as applied to claims 13, 23, and 24, above, and further in view of Henke et al. Henke et al. teach a pivotable sign assembly (36) comprises a sign having a flat visual display support surface (37), a pivot connector (60) extends from a display support upper edge (36) and including a pivot hook (62), see Figure 3, and the sign has a length of the sign contacts the forward region of the next adjacent lower shelf. See Figures 1, 2 and 4. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the modified shelf display assembly with the provision of a pivotable sign

assembly as taught by Henke et al. in order to have a sign that promotes information or advertising the products and at the same time allows easy access to the products stored behind the sign.

Claims 42- 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffington et al. in view of Visocky et al. Buffington et al. disclose a display shelf assembly comprising a base region (32) extending substantially coextensive with a bay width between two vertical supports (12); a pair of first and second bracket assemblies (44) connectable to the respective vertical supports and support the base region at a predetermined angles thereto. See Figures 7-10. Visocky et al. teach a mounting sign (21) having generally planar sign-engaging surfaces and at least two couplers (35 and 36) connected between sign engaging surfaces such that it alters the slope of the sign in a predetermined angles. See Figure 2. The coupler is configured to have a rearward disposed semi-circular periphery with a sequence of notches (43). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the shelf forward wall forming rods of Buffington et al. with a mounting sign as taught by Visocky et al. in order to have a price display device to display the price of the merchandise on the shelf.

With respect to claims 7, 8, 21 and 22, there is no disclosure of such an embodiment in the detailed description or drawings. In view of the fact that this particular embodiment has not been properly disclosed, claims 7, 8, 21 and 22 cannot be further treat on the merits since it is unknown what structure(s) in the claim being required.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gay ('562) and ('698), Cain et al., Black, Jr., Young, Jr., Metcalf, Loew, Henke et al., Parker, Loy, Roesler, Soporowski, Trulaske, Sr., Merl, and S. Ciborowski, Howard et al. ('311) and ('235), Carrigan, Jr., Battaglia et al., Sainato, Garfinkle, C. F. Smith, Fried et al., Upshaw et al., J. A. Rogus, and W. B. Panknin are cited to show devices having similar configurations of design.

***Allowable Subject Matter***

Claims 4, 20 and 36 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

***Response to Amendment***

Applicants' arguments with respect to claims 1-6, 9, 11-20, 23, 25-30, 32-36, and 42-50 have been considered but are moot in view of the new grounds of rejection.

With respect to applicants' request on page 2 of a Notice of the Draftperson Patent Drawing Review, it should be note that the drawings will be reviewed by a draftsperson after the application has been allowed and the prosecution of the application has ended. Then a such time, a notice of whether or not the drawings are considered to be formal will be send with the Notice of Allowability.

With respect to applicants' remarks that the applicants have not received the PTO-892 in the previous Office Action, a new PTO-892 will be send along with this

Office Action that includes the previously cited references and the new references cited thereof.

With respect to applicants' arguments that the nonstatutory double patenting rejection is improper because the instant application, continuation in part, is a result from the Patent 6,302,282, the examiner respectfully disagrees. It should be noted that there is no clear demarcation of the claimed brackets from the previous application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 8:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from

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Khoa Tran

April 30, 2003

  
ROBERT W. GIBSON, JR.  
PRIMARY EXAMINER  
ART UNIT 3634